

18 APR 2003



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

#29

Peacock Myers and Adams PC
PO Box 26927
Albuquerque, NM 87125-6927

In re Application of
VAN VEROOIJ, et al.
Application No.: 09/308,150
PCT No.: PCT/NL97/00624
Int. Filing Date: 14 November 1997
Priority Date: 15 November 1996
Attorney Docket No.: 30394-1027
For: PEPTIDE DERIVED FROM ...
DETECTING AUTOIMMUNE
ANTIBODIES

DECISION ON
PETITION UNDER
37 CFR 1.47(a)

This is in response to applicants' "Petition Under 37 C.F.R. §1.47(a)" filed in the United States Patent and Trademark Office (USPTO) on 30 September 1999.

BACKGROUND

On 14 November 1997, applicants filed international application PCT/NL97/00624. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 28 May 1998. A Demand for international preliminary examination, in which the United States was elected, was filed on 12 June 1998, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 17 May 1999 (15 May 1999 was a Saturday).

On 13 May 1999, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 06 July 1999, USPTO mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late furnishing of the oath or declaration were required.

On 30 September 1999, applicants filed "Petition Under 37 C.F.R. §1.47(a)" accompanied by, a declaration and the fee for a two month extension of time.

On 03 November 1999, the Office mailed Notification of Acceptance (Form PCT/DO/EO/903) indicating that the application had a 35 U.S.C. 102(e) date of 30 September 1999 and a 35 U.S.C. 371 date of 30 September 1999.

DISCUSSION

As an initial matter, it was brought to the Office's attention that Mr. Gerardus A. Schellekens was erroneously omitted as an inventor on the published application. The Office's records have been corrected.

A petition under 37 CFR 1.47 must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant.

Items (1), (3) and (4) have been met. The petition fee has been paid. The petition lists the last known address of the non-signing inventor Gerardus A. Schellekens as Zwanenveld 37-03; NL-6538 XV Nijmegen; the Netherlands. Office records indicate a correspondence address for Mr. Schellekens of Tondeldoos 36; 5231 WB Den Bosch; The Netherlands, as of 03 November 2002.

As to item (2), under 37 CFR 1.47(a), the petition must supply proof of pertinent facts. Applicants are alleging a refusal to sign the declaration. However, it is not clear that applicants sent a full copy of the application papers including the specification to the non-signing inventor. Additionally, though applicants indicate that the inventor refused to sign the documents in a letter, applicants have not furnished that letter. Additionally, applicants have supplied a copy of the DHL shipping label, but have not furnished the tracking records for the package.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED**, without prejudice.

The Notification of Acceptance mailed 03 November 1999 is hereby **VACATED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Applicant is advised that, effective May 1, 2003, the Office is changing its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.



Leonard E. Smith
PCT Legal Examiner
PCT Legal Administration



Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: (703) 305-0455

Facsimile: (703) 308-6459

Enclosure: Letter from Mr. Gerard A. Schellekens